

OFFICE OF THE SECRETARY OF STATE

TOBIAS READ
SECRETARY OF STATE

MICHAEL KAPLAN
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

PERMANENT ADMINISTRATIVE ORDER

DEQ 1-2025

CHAPTER 340

DEPARTMENT OF ENVIRONMENTAL QUALITY

FILED

01/09/2025 2:57 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Oregon E-Cycles Rulemaking

EFFECTIVE DATE: 01/09/2025

AGENCY APPROVED DATE: 01/09/2025

CONTACT: Emil Hnidey
503-568-0376
emil.hnidey@deq.oregon.gov

700 NE Multnomah St.
Suite 600
Portland, OR 97232

Filed By:
Emil Hnidey
Rules Coordinator

RULES:

340-012-0045, 340-012-0099, 340-012-0140, 340-012-0155, 340-098-0000, 340-098-0010, 340-098-0100, 340-098-0150, 340-098-0200, 340-098-0230, 340-098-0235, 340-098-0240, 340-098-0245, 340-098-0250, 340-098-0255, 340-098-0260, 340-098-0265, 340-098-0270

AMEND: 340-012-0045

RULE TITLE: Civil Penalty Determination Procedure

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Adds reference to 340-012-0099

RULE TEXT:

DEQ may assess a civil penalty for any violation, in addition to any other liability, duty, or other penalty provided by law. Except for civil penalties assessed under either OAR 340-012-0155 or OAR 340-012-0160, DEQ determines the amount of the civil penalty using the following formula: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$.

(1) BP is the base penalty and is determined by the following procedure:

(a) The classification of each violation is determined according to OAR 340-012-0053 to 340-012-0099.

(b) The magnitude of the violation is determined according to OAR 340-012-0130 and 340-012-0135.

(c) The appropriate base penalty (BP) for each violation is determined by applying the classification and magnitude of each violation to the matrices in OAR 340-012-0140.

(2) The base penalty is adjusted by the application of aggravating or mitigating factors set forth in OAR 340-012-0145.

(3) The appropriate economic benefit (EB) is determined as set forth in OAR 340-012-0150.

STATUTORY/OTHER AUTHORITY: ORS 468.020

STATUTES/OTHER IMPLEMENTED: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880-895, 468.090-140, 468.992, 468A.990, 468B.025, 468B.220, 468B.450

ADOPT: 340-012-0099

RULE TITLE: Classification of Violations for Producer Responsibility Program Requirements, including ORS 459A.305 to 459A.355 and related rules

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Classifies violations of requirements for producer responsibility programs, including requirements under ORS 459A.305 to 459A.355 and related rules

RULE TEXT:

(1) Class I:

- (a) Failing to register or participate in a producer responsibility organization;
- (b) Failing to substantially implement a producer responsibility program plan;
- (c) Failing to provide for environmentally sound management practices in the collection, transportation, or processing of covered electronic devices;

(2) Class II:

- (a) Failing to submit a plan, study, notification, report, or other required information to DEQ, unless otherwise specified;
- (b) Failing to implement one or more elements of a producer responsibility program plan;
- (c) For a coordinating body, failing to coordinate between electronics producer responsibility organizations;
- (d) Violating any otherwise unclassified requirement of ORS 459A.305 to 459A.355 or related rules.

STATUTORY/OTHER AUTHORITY: ORS 459A.345, 468.020

STATUTES/OTHER IMPLEMENTED: ORS 459A.305 - 459A.355

AMEND: 340-012-0140

RULE TITLE: Determination of Base Penalty

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Adds violations of ORS 459A.305 to 459A.355 to penalty matrices.

RULE TEXT:

(1) Except for Class III violations and as provided in OAR 340-012-0155, the base penalty (BP) is determined by applying the class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) \$12,000 Penalty Matrix:

(a) The \$12,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act, unless otherwise classified.

(B) Open burning violations as follows:

(i) Any violation of OAR 340-264-0060(3) committed by an industrial facility operating under an air quality permit.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(C) Any violation of the Oregon Low Emission and Zero Emission Vehicle rules (OAR 340-257) by a vehicle manufacturer.

(D) Any violation of ORS 468B.025(1)(a) or (1)(b), or of 468B.050(1)(a) by a person without a National Pollutant Discharge Elimination System (NPDES) permit, unless otherwise classified.

(E) Any violation of a water quality statute, rule, permit or related order by:

(i) A person that has an NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.

(ii) A person that has a Tier 1 industrial source NPDES or WPCF permit.

(iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has an NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.

(iv) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.

(v) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that disturbs 20 or more acres.

(F) Any violation of the ballast water statute in ORS Chapter 783 or ballast water management rule in OAR 340, division 143.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification by a 100 megawatt or more hydroelectric facility.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a dredge and fill project except for Tier 1, 2A or 2B projects.

(I) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by DEQ to perform tank services.

(J) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by DEQ to perform heating oil tank services.

(K) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.

(L) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter,

transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.

(M) Any violation of a hazardous waste statute, rule, permit or related order by:

(i) A person that is a large quantity generator or hazardous waste transporter.

(ii) A person that has or should have a treatment, storage or disposal facility permit.

(N) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a covered vessel or facility as defined in ORS 468B.300 or by a person who is engaged in the business of manufacturing, storing or transporting oil or hazardous materials.

(O) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.

(P) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.

(Q) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a solid waste disposal permit.

(ii) A city with a population of 25,000 or more, as determined by the most recent national census.

(R) Any violation of the Oregon Clean Fuels Program under OAR Chapter 340, division 253 by a person registered as an importer of blendstocks,

(S) Any violation classified under OAR 340-012-0054 (1) (dd), (ee), (ff), or (gg).

(T) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions greater than or equal to 25,000 metric tons per year or by a person that has not reported greenhouse gas emissions to DEQ during the past five years, or by a person for which DEQ has insufficient information to accurately estimate emissions.

(U) Any violation of the Third Party Verification rules under OAR Chapter 340, division 272.

(V) Any violation of the Landfill Gas Emissions rules under OAR chapter 340, division 239 by a person required to comply with OAR 340-239-0110 through OAR 340-239-0800.

(W) Any violation of the rules for Emission Standards for New Heavy-Duty Trucks under OAR chapter 340 division 261 by engine, truck or trailer manufacturers and dealers.

(X) Any violation of the Climate Protection Program rules under OAR chapter 340, division 271.

(Y) Any violation of the Fuel Tank Seismic Stability Program rules under OAR chapter 340, division 300.

(Z) Any violation of ORS 459A.305 to 459A.355 or related rules committed by:

(i) A producer responsibility organization.

(ii) A manufacturer.

(b) The base penalty values for the \$12,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$12,000;

(ii) Moderate — \$6,000;

(iii) Minor — \$3,000.

(B) Class II:

(i) Major — \$6,000;

(ii) Moderate — \$3,000;

(iii) Minor — \$1,500.

(C) Class III: \$1,000.

(3) \$8,000 Penalty Matrix:

(a) The \$8,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits, unless listed under another penalty matrix, unless otherwise classified.

(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.

- (C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.
- (D) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) committed by an automobile dealer or an automobile rental agency.
- (E) Any violation of a water quality statute, rule, permit or related order committed by:
- (i) A person that has an NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.
 - (ii) A person that has a Tier 2 industrial source NPDES or WPCF Permit.
 - (iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of less than five acres in size or 20 or more acres in size.
 - (iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.
 - (v) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage or geothermal fluids.
- (F) Any violation of a Clean Water Act Section 401 Water Quality Certification by a less than 100 megawatt hydroelectric facility.
- (G) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 2A or Tier 2B dredge and fill project.
- (H) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.
- (I) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:
- (i) A person that has or should have a waste tire permit; or
 - (ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.
- (J) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.
- (K) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person other than a person listed in OAR 340-012-0140(2)(a)(N) occurring during a commercial activity or involving a derelict vessel over 35 feet in length.
- (L) Any violation of the Oregon Clean Fuels Program under OAR chapter 340, division 253 unless the violation is otherwise classified in this rule.
- (M) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 25,000 metric tons per year but greater than or equal to 5,000 metric tons per year.
- (N) Any violation of the Landfill Gas Emissions rules under OAR chapter 340, division 239 by a person that owns or operates a landfill with over 200,000 tons waste in place and is not required to comply with OAR 340-239-0110 through OAR 340-239-0800.
- (O) Any violation of a hazardous waste pharmaceutical statute, rule, permit or related order committed by a person that is a reverse distributor.
- (b) The base penalty values for the \$8,000 penalty matrix are as follows:
- (A) Class I:
- (i) Major — \$8,000.
 - (ii) Moderate — \$4,000.
 - (iii) Minor — \$2,000.

(B) Class II:

(i) Major — \$4,000.

(ii) Moderate — \$2,000.

(iii) Minor — \$1,000.

(C) Class III: \$ 700.

(4) \$3,000 Penalty Matrix:

(a) The \$3,000 penalty matrix applies to the following:

(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.

(B) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person not listed under another penalty matrix.

(C) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have a Basic ACDP or an ACDP or registration only because the person is subject to Area Source NESHAP regulations.

(D) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

(E) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.

(F) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:

(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.

(ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.

(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.

(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater, sewage or geothermal fluids.

(vi) A person that has or should have a WPCF individual stormwater UIC system permit.

(vii) Any violation of a water quality statute, rule, permit or related order committed by a person that has or should have applied for coverage under an NPDES 700-PM General Permit for suction dredges.

(G) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by a residential owner-occupant.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 1 dredge and fill project.

(I) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.

(J) Any violation of a used oil statute, rule, permit or related order, except a violation related to a spill or release, committed by a person that is a used oil generator.

(K) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a very small quantity generator, unless listed under another penalty matrix.

(L) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.

(M) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.

(N) Any violation of rigid pesticide container disposal requirements by a very small quantity generator of hazardous waste.

(O) Any violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by non-

residential uses of property disturbing less than one acre in size.

(P) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person not listed under another matrix.

(Q) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 5,000 metric tons per year.

(b) The base penalty values for the \$3,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$3,000;

(ii) Moderate — \$1,500;

(iii) Minor — \$750.

(B) Class II:

(i) Major — \$1,500;

(ii) Moderate — \$750;

(iii) Minor — \$375.

(C) Class III: \$250.

(5) \$1,000 Penalty Matrix:

(a) The \$1,000 penalty matrix applies to the following:

(A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.

(B) Any violation of visible emissions standards by operation of a vehicle.

(C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.

(D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.

(E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.

(F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.

(G) Any violation of OAR chapter 340, division 124 or ORS 465.505 by a dry cleaning owner or operator, dry store owner or operator, or supplier of perchloroethylene.

(H) Any violation of ORS Chapter 459 or other solid waste statute, rule or related order committed by a residential owner-occupant.

(I) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.

(J) Any violation of a statute, rule or order relating to the opportunity to recycle.

(K) Any violation of OAR chapter 340, division 262 or other statute, rule or order relating to solid fuel burning devices, except a violation related to the sale of new or used solid fuel burning devices or the removal and destruction of used solid fuel burning devices.

(L) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater, sewage or geothermal fluids.

(M) Any Violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by residential use of property disturbing less than one acre in size.

(N) Any violation of ORS 459A.305 to 459A.355 or related rules committed by a person not listed under another matrix.

(b) The base penalty values for the \$1,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$1,000;

(ii) Moderate — \$500;

(iii) Minor — \$250.

(B) Class II:

- (i) Major — \$500;
- (ii) Moderate — \$250;
- (iii) Minor — \$125.
- (C) Class III: \$100.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468.090 - 468.140, 459A.345

STATUTES/OTHER IMPLEMENTED: ORS 459.995, 459A.655, 459A.660, 459A.685, 468.035, 459A.305 - 459A.355

AMEND: 340-012-0155

RULE TITLE: Additional or Alternate Civil Penalties

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Describes the civil penalty DEQ may assess for each violation of the prohibition against the disposal of computer monitors, desktop or portable computers, and televisions

RULE TEXT:

(1) DEQ may assess additional civil penalties for the following violations as specified below:

(a) DEQ may assess a civil penalty of up to \$250,000 to any person who intentionally or recklessly violates any provisions of ORS 164.785, 459.205-459.426, 459.705-459.790, Chapters 465, 466, 467, 468, or 468A or 468B or any rule or standard or order of the commission adopted or issued pursuant to 459.205-459.426, 459.705-459.790, Chapters 465, 466, 467, 468, 468A, or 468B, that results in or creates the imminent likelihood for an extreme hazard to public health or that causes extensive damage to the environment. When determining the civil penalty to be assessed under this subsection, the director will use the procedures set out below:

(A) The following base penalties apply:

(i) \$100,000 if the violation was caused intentionally;

(ii) \$150,000 if the violation was caused recklessly;

(iii) \$200,000 if the violation was caused flagrantly.

(B) The civil penalty is calculated using the following formula: $BP + [(1 \times BP) (P + H + O + C)] + EB$.

(b) Any person who intentionally or negligently causes or permits the discharge of oil or hazardous materials into waters of the state or intentionally or negligently fails to clean up a spill or release of oil or hazardous materials into waters of the state will incur a civil penalty not to exceed \$100,000 dollars for each violation. The amount of the penalty is determined as follows:

(A) The class and magnitude of the violation are determined according to OAR 340-012-0045, then the base penalty is determined according to OAR 340-012-0140.

(B) The multiplier for the base penalty is determined by adding the following values:

(i) 2 points if the violation was caused negligently; or 3 points if the violation was caused recklessly; or 4 points if the violation was caused intentionally with actual knowledge that a violation would occur; and

(ii) 1 point if the oil or hazardous material is or contains any constituent listed as a "hazardous substance" in 40 CFR 302; or 2 points if the oil or hazardous material is or contains any constituent listed as an "extremely hazardous substance" under 40 CFR 355; and

(iii) 2 points if the volume of the oil or hazardous material spilled, lost to the environment, or not cleaned up exceeds 1,000 gallons; and

(iv) 1 point if the violation impacted an area of particular environmental value where oil or hazardous materials could pose a greater threat than in other non-sensitive areas, for example, sensitive environments such as those listed in OAR 340-122-0115(50), drinking water sources, and cultural sites.

(C) The base penalty from paragraph (A) is multiplied by the sum of the points from paragraph (B) to determine the adjusted base penalty. The civil penalty formula in OAR 340-012-0045 is applied using the adjusted base penalty for the BP factor.

(c) Any person who willfully or negligently causes or permits the discharge of oil to state waters will incur, in addition to any other penalty derived from application of the applicable penalty matrix in 340-012-0140(2) and the civil penalty formula contained in 340-012-0045, a civil penalty commensurate with the amount of damage incurred. The amount of the penalty will be determined by the director with the advice of the director of the Oregon Department of Fish and Wildlife. In determining the amount of the penalty, the director may consider the gravity of the violation, the previous record of the violator in complying with the provisions of ORS 468B.450 to 468B.460, and such other considerations the director deems appropriate.

(d) Any person who has care, custody or control of a hazardous waste or a substance that would be a hazardous waste

except for the fact that it is not discarded, useless or unwanted. will incur a civil penalty according to the schedule set forth in ORS 496.705 for the destruction, due to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in ORS 496.705 that are property of the state.

(e) DEQ may assess a civil penalty of \$500 to any owner or operator of a confined animal feeding operation that has not applied for or does not have a permit required by ORS 468B.050.

(2) Civil penalties for certain violations are subject to the following maximums in lieu of the maximum daily penalty provided in OAR 340-012-160(4):

(a) DEQ may assess a civil penalty of up to \$1,000 for each day of violation to any person that fails to comply with the prohibitions on the sale or distribution of cleaning agents containing phosphorus in ORS 468B.130.

(b) DEQ may assess a civil penalty of up to \$500 for each violation of each day to any person that fails to comply with Toxics Use Reduction and Hazardous Waste Reduction Act requirements of ORS 465.003 to 465.034.

(c) DEQ may assess a civil penalty of up to \$500 for each violation of ORS 459.420 to 459.426. Each battery that is improperly disposed of is a separate violation, and each day an establishment fails to post the notice required by ORS 459.426 is a separate violation.

(d) DEQ may assess a civil penalty of up to \$500 for each violation of the requirement to provide the opportunity to recycle as required by ORS 459A.005.

(3) DEQ may assess the civil penalties below in lieu of civil penalties calculated pursuant to OAR 340-012-0045:

(a) DEQ will assess a Field Penalty as specified under OAR 340-150-0250 unless DEQ determines that an owner, operator or permittee is not eligible for the Field Penalty.

(b) DEQ may assess Expedited Enforcement Offers as specified under OAR 340-012-0170(2).

(4) DEQ may assess a civil penalty of up to \$500 for each violation of ORS 459.247(1)(f). Each covered electronic device that is disposed of improperly is a separate violation.

STATUTORY/OTHER AUTHORITY: ORS 465, 466, 468.020, 468.130, 468.996, 783.992, 459A.345

STATUTES/OTHER IMPLEMENTED: ORS 465.021, 466.785, 466.835, 466.992, 468.090 - 468.140, 468.996, 468B.220, 468B.450, 783.992, 459.247, 459.995

AMEND: 340-098-0000

RULE TITLE: Applicability

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Updates rule to clarify applicability of OAR 340-098-0000 to OAR 340-098-0270.

RULE TEXT:

(1) OAR 340-098-0000 to OAR 340-098-0270 prescribe requirements for electronics producer responsibility programs under ORS 459A.305 to 459A.355. OAR 340-098-0100 to OAR 340-098-0200 are in effect until and including December 31, 2025. OAR 340-098-0230 to OAR 340-098-0270 are effective February 1, 2025.

(2) OAR 340-098-0000, OAR 340-098-0010, and 340-098-0300 to OAR 340-098-0390 prescribe requirements and procedures for participating in, submitting program plans for, and operating, drug take-back programs under ORS 459A.200 to 459A.266.

(3) OAR 340-098-0000 and OAR 340-098-0400 to OAR 340-098-0460 clarify requirements of the Mattress Stewardship Act, SB 1576 (2022).

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468.065, 459A.345, SB 1576 (2022)

STATUTES/OTHER IMPLEMENTED: ORS 459A.315, SB 1576 (2022)

AMEND: 340-098-0010

RULE TITLE: Definitions

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Clarifies definitions for terms used in OAR 340-098-0100 to OAR 340-098-0270

RULE TEXT:

(1) For purposes of OAR Chapter 340, Division 98:

(a) "DEQ" means the Department of Environmental Quality.

(b) "Fiscal year" means the period beginning on July 1 of any year and ending on June 30 of the next year.

(2) Terms used in OAR 340-098-0100 through 340-098-0200 have the meaning provided in ORS 459A.305. Definitions for additional terms used in OAR 340-098-0100 through 340-098-0200 are in sections (3) and (4).

(3) As used in OAR 340-098-0100 to OAR 340-098-0200:

(a) "Market share" means the percentage of the total number of units of covered electronic devices sold in or into Oregon the previous calendar year or most recent four quarters for which data is available, as determined by DEQ.

(b) "Revenue need" means the total amount of revenue DEQ must collect in registration fees in order for the registration fees to approximately match DEQ's projected costs for implementing ORS 459A.305 to 459A.355, excluding costs incurred under ORS 459A.340(4).

(4) As used in OAR 340-098-0230 to OAR 340-098-0270:

(a) "Collection site" means a collector that, notwithstanding any premium services offered, accepts all categories, types and brands of covered electronic devices at no charge to covered entities.

(b) "Computer monitor" includes:

(A) A cathode-ray tube monitor;

(B) A flatscreen monitor; or

(C) A touchscreen monitor.

(c) "Desktop computer" includes:

(A) A thin client;

(B) A mini, single-board, or small form factor personal computer; or

(C) An all-in-one computer.

(d) "Covered electronic device materials" means a covered electronic device, a component of a covered electronic device, or a material from a covered electronic device.

(e) "Final disposition" means the point beyond which no further processing or refurbishing occurs and covered electronic device materials have been sold as whole units of covered electronic devices for reuse; disposed of; or processed into recycled materials for a market.

(f) "Market share" means a manufacturer's percentage of all registered covered electronic devices by weight sold within a product category during a specified time period.

(g) "Peripheral" means:

(A) A keyboard, mouse or other device sold exclusively for external use with a covered electronic device as a wireless or corded device that provides input into, or output from, a covered electronic device, including:

(i) A controller for a covered electronic device, such as a game controller, a joystick, or a flight simulation controller;

(ii) A docking station;

(iii) Headphones or ear buds;

(iv) A standalone speaker intended for use with covered electronic devices, but not a speaker intended for amplifiers or sound systems;

(v) An external drive;

(vi) A digital or media streaming device;

(vii) A web camera;

(viii) A headset; or

(ix) A power adapter charger.

(B) Cords used with a keyboard, mouse or other device described in subparagraph 4(g)(A) of this rule.

(h) "Portable computer" includes:

(A) A laptop;

(B) A tablet; or

(C) An e-reader.

(i) "Processor" means a person who recycles or otherwise processes covered electronic device materials derived from collected covered electronic devices.

(j) "Refurbish" means to repair a used covered electronic device in order to restore or improve the covered electronic device so that the device may be used for the same purpose for which it was originally designed.

(k) "Service provider or downstream vendor" means a person, including a collector, processor, refurbisher, or broker, receiving a covered electronic device or covered electronic device materials from the time the covered electronic device is collected by an electronics producer responsibility program through final disposition of the covered electronic device materials in that covered electronic device.

(5) Terms used in OAR 340-098-0300 to OAR 340-098-0390 have the meanings provided in ORS 459A.200 and ORS 459A.209.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468.065, 459A.345

STATUTES/OTHER IMPLEMENTED: ORS 459A.305, 459A.315

AMEND: 340-098-0100

RULE TITLE: Revenue Need Until and Including December 31, 2025

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Clarifies DEQ's revenue need until and including December 31, 2025.

RULE TEXT:

(1) Revenue need. The revenue need for the fiscal year beginning:

(a) July 1, 2012 is \$415,000;

(b) July 1, 2013 is \$435,000;

(c) July 1, 2014 is \$435,000; and

(d) July 1, 2015 and for subsequent fiscal years until and including December 31, 2025 is \$465,000.

(2) Revenue need adjustments.

(a) If the revenue collected from registration fees under OAR 340-098-0150 exceeds DEQ's actual costs for the program, DEQ will reduce the revenue need by the excess amount in a subsequent year. DEQ will also evaluate whether to revise the revenue need for future years to ensure that revenue need approximately matches DEQ's projected costs for implementing ORS 459A.305 to 459A.355, excluding costs incurred under ORS 459A.340(4).

(b) If DEQ has been unable to collect revenue from registration fees owed for a prior year, DEQ may add the amount of uncollected revenue to the revenue need in a subsequent year as necessary to ensure that revenue approximately matches DEQ's projected costs as described in subsection (a). DEQ will make good faith efforts to collect registration fees owed.

(3) Reporting. Each fiscal year DEQ will report its current and projected program expenditures and revenue.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468.065, 459A.345

STATUTES/OTHER IMPLEMENTED: ORS 459A.315

AMEND: 340-098-0150

RULE TITLE: Registration Fees Until and Including 2025

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Clarifies that DEQ will use the registration fee determination described in this rule until December 31, 2025.

RULE TEXT:

Section (1) describes generally how DEQ determines registration fees until and including December 31, 2025, and sections (2) through (4) provide the specific process for determining registration fees until and including December 31, 2025.

(1) Overview. Each year manufacturer registration fees total the revenue need for that year. DEQ assigns manufacturers to registration fee Tiers 1-7 based on their market share. All manufacturers within a tier pay the same registration fee in any given year. Manufacturers in Tier 6 pay a fee of \$200. Manufacturers in Tier 7, with the smallest market share, pay \$40. Fees for manufacturers in Tiers 1-5 are calculated each year to total the revenue need remaining after subtracting the revenue expected from Tiers 6 and 7. To determine the manufacturer fee for each of Tiers 1-5, the total market share for all manufacturers in a tier is multiplied by the remaining revenue need. That revenue share for the tier is then divided by the number of manufacturers in the tier to determine the fee for those manufacturers. DEQ then adjusts the fees for Tiers 1-5 so that no fee is more than \$35,000 or less than \$200. If the fee for any tier is over \$35,000, DEQ caps the fee at \$35,000, and distributes the amount of unallocated revenue from that tier to lower tiers in proportion with their market share (excluding Tiers 6 and 7). If the resulting fee for any tier is below \$200, DEQ raises the fee to \$200 for that tier and recalculates the fees for the higher tiers as described above for Tiers 1-5.

(2) Total registration fees. Each year the total registration fees of manufacturers required to pay a registration fee under ORS 459A.315 and OAR 340-098-0000 through 340-098-0200 will equal the revenue need for the fiscal year beginning July 1 of that year.

(3) Registration fees. For each year after 2012, each manufacturer will pay a registration fee described in this section:

(a) Registration fees will be based on the following fee tiers:

(A) Tier 1 includes all manufacturers with a market share greater than or equal to 5%;

(B) Tier 2 includes all manufacturers with a market share greater than or equal to 1% but less than 5%;

(C) Tier 3 includes all manufacturers with a market share greater than or equal to 0.1% but less than 1%;

(D) Tier 4 includes all manufacturers with a market share greater than or equal to 0.03% but less than 0.1%;

(E) Tier 5 includes all manufacturers with a market share greater than or equal to 0.01% but less than 0.03%;

(F) Tier 6 includes all manufacturers with a market share less than 0.01% that equates to 50 or more units.

(G) Tier 7 includes all manufacturers with a market share that equates to less than 50 units.

(b) The registration fee for each manufacturer in Tier 6 will be \$200. The registration fee for each manufacturer in Tier 7 will be \$40.

(c) The registrations fees for manufacturers in Tiers 1-5 will equal the revenue need remaining after subtracting the revenue expected from Tier 6 and 7 fees.

(d) For Tiers 1-5, except as adjusted by subsections (3)(f) through (3)(i), the total registration fees for each tier will be a percentage of the remaining revenue need that is equal to the total market share of the manufacturers in that tier.

(e) For Tiers 1-5, except as adjusted by subsections (3)(f) through (3)(i), the registration fee of each manufacturer in a given tier will be the amount of the remaining revenue need that the manufacturer's tier is responsible for, as stated subsection (3)(d), divided by the number of manufacturers in that tier.

(f) For Tiers 1-5, the registration fee for manufacturers in any tier will not be more than \$35,000. The registration fee for manufacturers in a tier in which the registration fee is calculated to be more than \$35,000 will be adjusted to \$35,000.

(g) For Tiers 1-5, after the registration fee adjustments described in subsection(3)(f), the registration fees of each manufacturer in a tier with registration fees below \$35,000 will also be adjusted so that total registration fees still equal

the remaining revenue need, as follows:

(A) Fee adjustment = $(W \times (X \div Y)) \div Z$.

(B) "W" is the net amount of registration fees above \$35,000.

(C) "X" is the total market share of all the manufacturers in the manufacturer's tier.

(D) "Y" is the total market share for all manufacturers in tiers 1-5 with registration fees below \$35,000, excluding manufacturers whose fees have been adjusted to \$200 in accordance with subsection (3)(i).

(E) "Z" is the total number of manufacturer's in the manufacturer's tier.

(h) If any manufacturer in Tiers 1-5 would pay a registration fee greater than \$35,000 after the process described in subsection (3)(g), the process described in subsections (3)(f) and (3)(g) will be repeated until no manufacturer pays a registration fee greater than \$35,000.

(i) After the process described in subsections (3)(f) through (3)(h) has been completed, the registration fee for any manufacturer in Tiers 1-5 in which the registration fee is calculated to be less than \$200 will be adjusted to \$200. The total revenue from all fees in tiers for which fees are raised to \$200 will be subtracted from the remaining revenue need and the fees for all higher tiers will be recalculated to meet that adjusted revenue need as described in subsections (3)(d) through (3)(i). The process described in subsections (3)(d) through (3)(i) will be repeated until no manufacturer pays a registration fee less than \$200.

(4) 2012 fees. Manufacturers will pay registration fees in ORS 459A.315(2)(b) for calendar year 2012, except:

(a) If the total revenue to be collected under the method described in ORS 459A.315(2)(b) is less than the revenue need for 2012, DEQ will calculate each manufacturer's registration fee according to OAR 340-098-0150(3);

(b) The registration fees of manufacturers whose registration fees would be at least \$250 higher calculated under OAR 340-098-0150(3) than under ORS 459A.315(2)(b) will be adjusted so that the total registration fees for 2012 equal revenue need; and

(c) Each manufacturer described in subsection (4)(b) will pay the following registration fee adjustment: Fee adjustment = $(A \times (B \div C)) \div D$ where:

(A) "A" is the difference between the revenue need and the amount to be collected under the method described in ORS 459A.315(2)(b);

(B) "B" is the total market share of all manufacturers in the manufacturer's tier;

(C) "C" is the total market share of all manufacturers described in subsection (4)(b); and

(D) "D" is the total number of manufacturers in the same tier as the manufacturer.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468.065, 459A.345

STATUTES/OTHER IMPLEMENTED: ORS 459A.315

AMEND: 340-098-0200

RULE TITLE: Market Share Notifications Until and Including 2025

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Clarifies that DEQ will use the market share and fee tier determination described in this rule until and including 2025.

RULE TEXT:

(1) Preliminary determination. Beginning in 2013 and each year thereafter until and including 2025, DEQ will make a preliminary determination of each manufacturer's market share and fee tier for that fiscal year and notify each manufacturer of that determination.

(2) Change requests. Each manufacturer will have 30 days to request changes to the preliminary market share and fee tier determination. A manufacturer requesting a change must provide DEQ the relevant information the manufacturer believes supports the change and any other information requested by DEQ to evaluate the requested change.

(3) Final determination. After the 30-day period described in section (2), DEQ will make a final determination of each manufacturer's market share and fee tier and notify each manufacturer of that determination. In making the final market share and fee tier determinations, DEQ will use the best available information as determined by DEQ including any relevant information provided by manufacturers under section (2).

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468.065, 459A.345

STATUTES/OTHER IMPLEMENTED: ORS 459A.315

ADOPT: 340-098-0230

RULE TITLE: Market Share Notifications Beginning 2026

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Describes the market share determination that DEQ will use beginning 2026

RULE TEXT:

(1) Preliminary market share. Beginning in 2026 and each year thereafter, DEQ will make a preliminary determination of each manufacturer's market share for the program year and notify each manufacturer of that determination.

(2) Change requests. Each manufacturer will have 30 days to request changes to the preliminary market share. A manufacturer requesting a change must provide DEQ the relevant information the manufacturer believes supports the change and any other information requested by DEQ to evaluate the requested change.

(3) Final market share. After the 30-day period described in section (2), DEQ will make a final determination of each manufacturer's market share and notify each manufacturer of that determination. In making the final market share determinations, DEQ will use the best available information as determined by DEQ, including any relevant information provided by manufacturers under section (2).

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468.065, 459A.345

STATUTES/OTHER IMPLEMENTED: ORS 459A.315, 459A.340

ADOPT: 340-098-0235

RULE TITLE: Electronics Producer Responsibility Organization Fees

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Establishes the plan review fee and annual fee that an electronics producer responsibility organization must pay to DEQ.

RULE TEXT:

- (1) Each electronics producer responsibility organization must pay the fees in this rule to DEQ.
- (2) Plan review fee.
 - (a) The plan review fee for an initial plan submitted by an electronics producer responsibility organization is \$75,000.
 - (b) An electronics producer responsibility organization must pay the plan review fee before submitting its initial plan for an electronics producer responsibility program.
- (3) Annual fee.
 - (a) For 2026 and for each year thereafter, the annual fee is \$315,000.
 - (b) Each electronics producer responsibility organization with an approved plan to operate an electronics producer responsibility program in the year to which the annual fee applies must pay an equal share of the total annual fee.
 - (c) DEQ may reduce the annual fee for a given year to ensure fee revenue approximately matches DEQ's projected costs for that year.
 - (d) An electronics producer responsibility organization must pay DEQ the annual fee by June 1 of each year, beginning with June 1, 2026.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468.065, 459A.345

STATUTES/OTHER IMPLEMENTED: ORS 459A.334

ADOPT: 340-098-0240

RULE TITLE: Program Plans

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Describes the plan submission process and what DEQ may require in a plan.

RULE TEXT:

- (1) DEQ may require a prospective electronics producer responsibility organization to submit a letter of intent to DEQ declaring the electronics producer responsibility organization's intention to submit a program plan for the implementation of an electronics producer responsibility program.
- (2) Unless directed otherwise by DEQ, an electronics producer responsibility organization must submit a program plan by July 1 in a given year for the implementation of an electronics producer responsibility program in the following calendar year. DEQ may reject a program plan if the program plan is not timely submitted.
- (3) An electronics producer responsibility organization must provide in its electronics producer responsibility program plan information required by DEQ to evaluate how the electronics producer responsibility organization will implement an electronics producer responsibility program that complies with ORS 459A.305 to 459A.355. Such information can include information on coordination if multiple program plans are approved, public awareness, program financing, the provision of convenient and equitable service throughout the state, environmentally sound management practices, fair financial compensation to collection sites, and measurement and achievement of goals. Information that DEQ can require in a program plan includes but is not limited to:
- (a) A single point of contact for the electronics producer responsibility organization for Oregon;
 - (b) The names of any electronics producer responsibility organizations that the prospective electronics producer responsibility organization will share collection sites with;
 - (c) How the electronics producer responsibility organization will comply with OAR 340-098-0250 and will provide fair financial compensation to collection sites calculated to cover the costs of collecting, storing, managing and transporting covered electronic devices, such as by offering:
 - (A) Compensation rates necessary to ensure that a collection site can operate in an area where a collection site is required to meet convenient service under statute, with consideration for how the collection site can support the area being served and provide environmentally sound management practices;
 - (B) Comparable compensation rates for collection sites that operate in similar geographic areas;
 - (C) Compensation to cover costs for conducting sorting according to the product categories in OAR 340-098-0265 and to provide for environmentally sound management practices, although an electronics producer responsibility organization may offer incentives to conduct additional sorting or to improve program efficiency; and
 - (D) Compensation informed by recommendations or results of collection site compensation studies conducted under OAR 340-098-0250.
 - (d) How the electronics producer responsibility organization will measure public awareness across the state and in minority, lower-income, rural and other historically underserved communities, such as through statistically significant surveys that oversample for underserved communities;
 - (e) Milestones, timelines, and deliverables on implementation;
 - (f) What steps or any changes the electronics producer responsibility organization will take that ensure the electronics producer responsibility organization meets plan requirements and program goals;
 - (g) How the electronics producer responsibility organization will provide convenient and equitable service throughout the state, including:
 - (A) the list of collection sites that have committed in writing to collect covered electronic devices under the electronics producer responsibility program and
 - (B) if the electronics producer responsibility organization will share a collection site with another electronics producer responsibility organization, which collection site will be shared with another electronics producer responsibility organization and which electronics producer responsibility organization will be primarily responsible for servicing,

managing, and compensating the collection site;

(h) Information on how collection sites and other collection services will offer convenient and equitable service throughout Oregon, such as whether collectors offer consistent business hours, the hours of operation for such collectors, and language and physical accessibility considerations;

(i) How the electronics producer responsibility organization will address any issues of noncompliance or nonperformance to ensure the electronics producer responsibility organization implements the electronics producer responsibility program according to the electronics producer responsibility organization's approved plan; and

(j) The entity that the electronics producer responsibility organization will designate as a coordinating body if multiple plans are approved.

(4) DEQ may reject an electronics producer responsibility program plan if a prospective electronics producer responsibility organization did not represent at least five percent of all manufacturer obligations in a previous year and cannot demonstrate to DEQ's satisfaction that the prospective electronics producer responsibility organization can represent at least five percent of manufacturer obligations for the upcoming year.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468.065, 459A.345

STATUTES/OTHER IMPLEMENTED: ORS 459A.320

ADOPT: 340-098-0245

RULE TITLE: Environmentally sound management practices

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Clarifies requirements for environmentally sound management practices in managing covered electronic devices.

RULE TEXT:

(1) Standards for environmentally sound management practices. Unless approved otherwise by DEQ under subsection (3), an electronics producer responsibility organization must provide environmentally sound management practices that ensure:

(a) Continuous improvement in environmental outcomes, reduction of environmental impacts, and protection of health, safety, and data privacy in the management of covered electronic device materials;

(b) From the time a covered electronic device is collected from a covered entity through to final disposition of the covered electronic device materials in that covered electronic device, each service provider or downstream vendor involved in the management of covered electronic device materials, manages covered electronic device materials in a way that:

(A) Minimizes environmental impacts;

(B) Protects health, safety, and data privacy;

(C) Incorporates the solid waste management hierarchy, prioritizing the reuse and refurbishment of covered electronic devices above recycling, and recycling of covered electronic device materials above disposal of covered electronic device materials, consistent with all applicable laws; and

(D) Complies with all legal requirements applicable to the service provider or downstream vendor regarding the acceptance and handling of the covered electronic device materials, including legal requirements related to:

(i) Collection, waste and recycling processing, reuse, refurbishment, storage, handling, and shipping;

(ii) Air emissions and wastewater discharge, including storm water discharges;

(iii) Worker health and safety;

(iv) Wage and labor laws; and

(v) Transboundary movement of covered electronic device materials, including electronic equipment, components, materials, waste, or scrap for reuse, refurbishment, recycling, or disposal.

(c) A covered electronic device is sent to processors, refurbishers, or for reuse within six months of a collector receiving the covered electronic device from a covered entity.

(2) Required environmentally sound management practices. Unless approved otherwise by DEQ under subsection (3), an electronics producer responsibility organization must provide for the following environmentally sound management practices.

(a) Recordkeeping. An electronics producer responsibility organization must retain all records related to the implementation and administration of the electronics producer responsibility program, including records on whether environmentally sound management practices were provided, for not less than three years from the time the record was created and make the records available for inspection and audit by DEQ at DEQ offices upon request. An electronics producer responsibility organization must maintain records on the chain of custody for covered electronic device materials from collection to final disposition. Records must include:

(A) A point of contact for each service provider or downstream vendor;

(B) The types and amounts of covered electronic device materials that are recovered for reuse, refurbished, recycled, disposed of, or otherwise managed by each service provider or downstream vendor;

(C) The types of refurbishment, recycling, disposal, or other management methods used by each service provider or downstream vendor for covered electronic device materials;

(D) Documentation by each service provider or downstream vendor that the service provider or downstream vendor adhered to environmentally sound management practices and complied with all laws and regulations applicable to their

management of covered electronic device materials; and

(E) Information on each service provider or downstream vendor's end markets for covered electronic device materials and end market contacts that the electronics producer responsibility organization uses to verify chain of custody.

(b) Requirements for service provider and downstream vendors. An electronics producer responsibility organization must require each service provider or downstream vendor to:

(A) Maintain all records related to covered electronic device materials for at least three years and ensure that such records are available to the electronics producer responsibility organization, including if the service provider or downstream vendor closes or leaves the electronics producer responsibility program;

(B) Cooperate with performance audits, records review, and inspections conducted by the electronics producer responsibility organization or DEQ;

(C) Maintain liability insurance and financial assurances;

(D) Provide regular training and maintain policies on site management and operation requirements for the collection, sorting, or processing of covered electronic device materials; and

(E) If the service provider or downstream vendor is located in Oregon, comply with applicable state and local recordkeeping and reporting requirements, including reporting requirements for the Oregon Material Recovery Survey under OAR 340-090-0100 and any covered electronic devices reporting and tracking requirements for covered electronic devices.

(e) Monitoring. As part of monitoring and evaluating adherence by service provider and downstream vendors to environmentally sound management practices, an electronics producer responsibility organization must conduct:

(A) Reviews of changes in management processes in collectors and processors as changes arise;

(B) Quarterly reviews of collection reports from collectors and processing reports from processors;

(C) An annual audit of records related to the electronics producer responsibility program maintained by service providers and downstream vendors;

(D) Annual interviews with or surveys of collectors;

(E) Annual in-person site visits of:

(i) At least one-third of collectors in the electronics producer responsibility organization's collection network, including sites shared with another electronics producer responsibility organization where the electronics producer responsibility organization is the primary electronics producer responsibility organization; and

(ii) All processors;

(F) Annual deployment of tracking devices to verify chain of custody and the fate of covered electronic device materials.

(f) An electronics producer responsibility organization must have processes to track and address fines, violations, or issues, including safety or security incidents, involving or likely to affect a service provider or downstream vendor's management of covered electronic device materials. Processes must ensure the electronics producer responsibility organization will promptly notify DEQ of fines, violations, or issues related to environmentally sound management practices. Processes must also ensure the electronics producer responsibility organization can take appropriate action to ensure the environmentally sound management of covered electronic devices. Appropriate action can include terminating agreements with service providers or downstream vendors.

(g) Continuous improvement. An electronics producer responsibility organization must annually evaluate strategies to better achieve the standards for environmentally sound management practices in subsection (1). Strategies include incorporating new, more effective technologies; and improving existing practices and processes.

(h) Technical assistance. An electronics producer responsibility organization must offer technical assistance to collection sites on environmentally sound management practices.

(3) DEQ administration.

(a) DEQ may approve an alternative environmentally sound management practice to the requirements of subsections (1) and (2) if the electronics producer responsibility organization demonstrates to DEQ's satisfaction that the alternative environmentally sound management practice, such as the use of an independent, third-party certification program, exceeds or is substantially equivalent in ensuring protection of, and compliance with all laws applicable to,

human health and safety, the environment, and data privacy.

(b) For the purposes of monitoring compliance with environmentally sound management practices, DEQ may use tracking devices to track the fate of covered electronic device materials.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468.065, 459A.345

STATUTES/OTHER IMPLEMENTED: ORS 459A.305, 459A.320

ADOPT: 340-098-0250

RULE TITLE: Fair Financial Compensation

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Clarifies the requirement for an electronics producer responsibility organization to provide fair financial compensation to collection sites, and how DEQ may evaluate whether the requirements have been met.

RULE TEXT:

- (1) In offering compensation to collection sites, an electronics producer responsibility organization shall review the costs of collecting, storing, managing and transporting covered electronic devices across a range of Oregon collection sites, where such information is available to the electronics producer responsibility organization.
- (2) An electronics producer responsibility organization or coordinating body must cooperate with, and provide any information requested by, DEQ on whether an electronics producer responsibility organization has provided fair financial compensation to collection sites. Such information includes compensation rates offered to a collection site or a prospective collection site.
- (3) As part of administering ORS 459A.305 to 459A.355, DEQ may conduct a study in 2028, and periodically thereafter on collection site compensation offered by electronics producer responsibility organizations.
 - (a) The study may include, but is not limited to, evaluations of:
 - (A) The real costs of collection sites in urban and in rural areas in Oregon in collecting, storing, managing and transporting covered electronic devices, including labor, packing, storage, and security costs, and ways to manage costs across these functions;
 - (B) Compensation rates offered to a collection site and to a potential collection site;
 - (C) Trends in collection costs and collection site compensation in Oregon;
 - (D) Alternative forms of compensation to compensation on a price-per-pound basis, such as a baseline fee for participation as a collection site, with price-per-pound compensation for pounds collected above a minimum threshold; and
 - (E) How changes in compensation may impact convenience.
 - (b) An electronics producer responsibility organization or coordinating body must cooperate with and provide any information requested by DEQ to conduct the study.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468.065, 459A.345

STATUTES/OTHER IMPLEMENTED: ORS 459A.320

ADOPT: 340-098-0255

RULE TITLE: Annual Reports

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Describes the annual report submission process and what DEQ may require in an annual report.

RULE TEXT:

(1) Unless directed otherwise by DEQ, an electronics producer responsibility organization must submit an annual report on the activities of its electronics producer responsibility program in a given calendar year by March 1 of the following year.

(2) An electronics producer responsibility organization must provide in its annual report information required by DEQ to evaluate whether the electronics producer responsibility organization implemented its electronics producer responsibility program in accordance with the electronics producer responsibility organization's approved program plan and with ORS 459A.305 to 459A.355. Such information may include information on coordination if multiple program plans are approved, public awareness, program financing, environmentally sound management practices, fair financial compensation to collection sites, and measurement and achievement of goals, including but not limited to:

(a) The reporting of the total weight of each type of covered electronic device, including peripherals, by product categories;

(b) How the electronics producer responsibility organization provided environmentally sound management practices during the program year as required by OAR 340-098-0245, including

(A) A summary of any safety or security problems that occurred during the collection, transportation or disposal of covered electronic devices, such as fires that may have been resulted from managing covered electronic devices under a producer responsibility program at collection sites, processors, and other service providers and downstream vendors, and the actual or potential future resolutions of those problems; and

(B) A list of collection sites and processors that the electronics producer responsibility organization conducted in-person site visits of or provided technical assistance to during the program year.

(c) Whether the electronics producer responsibility organization achieved program goals and possible reasons for why the electronics producer responsibility organization fell short of a goal and actions to remedy shortfalls or achieve the goal.

(d) Whether the electronics producer responsibility organization implemented or provided compensation informed by recommendations or results of collection site compensation studies conducted under OAR 340-098-0250.

(3) An electronics producer responsibility organization may count pounds of covered electronic devices collected by a collection site through premium services towards the electronics producer responsibility organization's collection goals.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468.065, 459A.345

STATUTES/OTHER IMPLEMENTED: ORS 459A.320

ADOPT: 340-098-0260

RULE TITLE: Coordinating Body

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Describes what DEQ may require of a prospective coordinating body, the coordinating body designation process, and what DEQ may direct regarding coordination between multiple electronics producer responsibility programs.

RULE TEXT:

- (1) DEQ may require a prospective coordinating body to submit a letter of intent and information to help DEQ evaluate the prospective coordinating body's ability to serve as a coordinating body.
- (2) If electronics producer responsibility organizations with approved plans are unable to designate a coordinating body in accordance with the timeline set by DEQ, DEQ may designate a coordinating body that DEQ determines will be in the best interest of the electronics producer responsibility programs. A prospective coordinating body must provide any information DEQ needs to make its decision.
- (3) DEQ may direct a coordinating body to conduct any coordination between electronics producer responsibility organizations for the implementation of electronics producer responsibility programs pursuant to ORS 459A.305 to 459A.355, including coordination related to:
 - (a) Public education and outreach activities to advertise and promote, on a regular basis, recycling of covered electronic devices and collection opportunities statewide;
 - (b) Program goals, including collection goals and public awareness goals; or
 - (c) The conducting of surveys or other measurements of public awareness about the electronics producer responsibility programs and electronics recycling opportunities.
 - (d) The reconciliation of financial obligations between all electronics producer responsibility organizations based on manufacturer obligations of the manufacturers participating in the electronics producer responsibility organizations.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468.065, 459A.345

STATUTES/OTHER IMPLEMENTED: ORS 459A.323

ADOPT: 340-098-0265

RULE TITLE: Product Categories

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Describes the product categories for purposes of sorting covered electronic devices at collection and calculating market share.

RULE TEXT:

Beginning in 2026, the product categories for purposes of sorting covered electronic devices at collection and calculating market share are:

- (1) Category 1 includes desktop computers, portable computers, and small-scale servers;
- (2) Category 2 includes printers, scanners, and fax machines;
- (3) Category 3 includes monitors and televisions;
- (4) Category 4 includes portable digital music players, digital video disc players, digital video disc recorders, videocassette recorders, video game consoles, digital converter boxes, cable receivers, satellite receivers, routers, and modems; and
- (5) Category 5 includes peripherals.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468.065, 459A.345

STATUTES/OTHER IMPLEMENTED: ORS 459A.305

ADOPT: 340-098-0270

RULE TITLE: Manufacturer Obligation Calculation

NOTICE FILED DATE: 08/29/2024

RULE SUMMARY: Describes the process for a coordinating body or an electronics producer responsibility organization to calculate manufacturer obligations.

RULE TEXT:

(1) A coordinating body, or an electronics producer responsibility organization if a coordinating body is not designated, must annually calculate each manufacturer's manufacturer obligation by:

(a) Multiplying the manufacturer's market share for each product category by the product category's percentage of the total weight of all covered electronic devices recycled during the previous year; and

(b) Adding the percentages calculated under subparagraph (a) of this section.

(2) In calculating a product category's percentage of the total weight of covered electronic devices recycled during the previous year for subparagraph 1(a) of this rule, an electronics producer responsibility organization or coordinating body shall use the total weight of covered electronic devices recycled in an electronics producer responsibility program during the previous year. For 2026, where covered electronic devices are not eligible for recycling by an electronics producer responsibility program in 2025, an electronics producer responsibility organization or coordinating body may use national data, consumer research, sampling, or any other similar data from 2025 to apportion the costs of the program or programs among all manufacturers, and to reconcile such apportionment against manufacturer obligations in subsequent years.

STATUTORY/OTHER AUTHORITY: ORS 468.020, 468.065, 459A.345

STATUTES/OTHER IMPLEMENTED: ORS 459A.305, 459A.323